ty belonging to the wards (who, incidentally, are Respondent's own children) came on to be heard and at such hearing before the Petitioner, the Petitioner announced from the bench that Respondent's attorney had sneaked behind the back of Petitioner and gotten County Judge Simpson to sign the confirmation of the previous sale and that he, Petitioner, would keep all the records and court papers under lock and key to prevent anyone from having access thereto; and as of this date in 1965, he has effectively done that very thing. However, the application to sell is now moot. The interest of the wards was an undivided interest and the end was accomplished by the owners of the other interest filing a suit in Grayson County, Texas, for partition and obtaining an order of the court in that county to sell the whole, but this sale under order of the Grayson County court occurred long after the trial court proceedings which Petitioner complains of.

The Constitution of the State of Texas provides that the District Court shall have "appellate jurisdiction and general control" over the County Court in matters of probate of estates, of deceased persons, of minors, and of non compus mentis individuals, *Article V, Section 8, Texas Constitution.*

The laws of the State of Texas, providing for expediting business in the District Courts, have divided the District Courts into "Administrative Districts" and have provided for the appointment of a Presiding Judge in each Administrative District. The district in which Fort Worth is situated extends northward to the Red River and includes Montague County, Texas, the District Judge in which County is the Honorable Louis Holland, who, at the time of the instant case,

was the Presiding Judge of this Administrative District. Such law also provides that the Presiding Judge of each Administrative District shall assign the District Judges to proceed to hold court in any other district where there is a need for help. In the case at bar, Petitioner had attacked the Trial Judge, Charles Murray, of the 17th District Court, Fort Worth, Texas, (in which this mandamus suit was pending) and each of the other five (5) District Judges in Tarrant County who might have been available to handle the trial, and Judge Murray appealed to Presiding Judge Holland to send a judge to try this mandamus. Judge Holland simply ordered himself, as Presiding Judge of the Administrative District which includes Fort Worth, to proceed to Fort Worth and try the mandamus suit of Respondent against the Petitioner. Judge Holland did try it. Petitioner appealed to the Court of Civil Appeals and the Trial Court's judgment was affirmed and the Supreme Court of Texas refused his application for a writ of error.

REPLY TO ALLEGED "FEDERAL QUESTIONS"

(A) MOTION FOR CONTINUANCE: There is no Federal question involved whatsoever. Let us imagine, which is not so, that Judge Holland was prejudiced. Petitioner had the Court of Civil Appeals to act on the appeal of the order on application for continuance and also the Supreme Court of Texas, one of whom he quotes on Page 5 of his application as being "eloquent." The entire twelve judges unanimously refused the relief that Petitioner asked for. He doesn't contend that the Appellate Courts were prejudiced against him. The claim about hiring a lawyer is meretricious. Petitioner is himself an attorney, having graduated from

the University of Texas Law School in 1948, and is a member of the State Bar. He concedes in his brief that he did not complain to Judge Holland that he, Petitioner, did not have an attorney, but in fact announced to the Court that he had worked night and day preparing his pleadings and in getting ready to go to trial. It would be almost impossible to believe that a licensed attorney and incumbent judge would honestly think that a hearing on a mandamus suit was merely a preliminary pre-trial matter. The "show-cause order" has, long before Judge Crouch's birth, been the accepted fashion of instituting a mandamus suit. Petitioner had two years to get him lawyers if he needed them. He had two firms of lawyers totaling some twenty (20) or more to represent him in the appellate courts. He had months and even years to get ready for this thing, for the record shows that he has had this estate tied up for that long without entering an order, in spite of the pendency of these various applications. Neither will he deny that Judge Craik, District Judge of the 96th District Court, Fort Worth, Texas, appointed two excellent lawyers—one of them a former Assistant Attorney General—to represent him and Petitioner refused to have them and walked out of the courtroom and refused to come back as long as those two lawyers were present. This is in the *Stanley* case that Petitioner mentions in his application for a writ on Page 11. Not only that, but you will find in the record that he parted company with his lawyers after he lost his case in the Court of Civil Appeals and went it alone in the Supreme Court of Texas just as he is doing here. He does not show and he can't show that he would have come any nearer to defeating the order of Judge Holland if he had had the benefit of the very

best and the very most of the attorneys of the State of Texas. He made no point in his application to the Supreme Court of Texas for writ of error that he was entitled to a continuance to obtain lawyers and he made no objections in a motion for re-hearing to the Court of Civil Appeals for lack of opportunity to obtain lawyers.

(B) TRIAL BY JURY: The fact that he didn't have a jury trial presents no Federal question. This was a mandamus suit, which is a suit in equity. He has no United States Constitutional right to a jury in such a case, *Walker v. Sauvinet, 92 US 90*, and many others. There was no dispute as to the facts. There was nothing for a jury to pass upon.

(C) FAIR AND IMPARTIAL HEARING: The Trial Judge was not disqualified. There is no fact shown that raises, to any well-ordered mind, evidence of any such disqualification. Petitioner charged the Judge of the 17th District Court with being prejudiced, the Judge of the 48th District Court with being prejudiced, County Judge Marvin Simpson with being prejudiced, and now the Presiding Judge for the entire Administrative District, who resides sixty (60) miles from Fort Worth and who has no vote in Petitioner's election nor does Petitioner have any vote in the selection of the District Judge for Montague County and the record makes no showing that anything had ever arisen between the Petitioner and Judge Holland. The situation reminds one of the ancient cliché of the mother, watching the military parade of the company in which her son was a private, who said, "Look, Everybody's out of step but Willie!"

(D) WANT OF TIME TO PREPARE DE-

FENSE: The opinion in the Court of Civil Appeals is probably the best answer to the contention of the Petitioner that he didn't have time to prepare his defense, or, as he puts it, "want of adequate notice." He says himself that he had four (4) cases, including this one, in which similar complaint was made of him. It would stagger credulity to say that he hadn't had time to find out what his rights are. There are no Federal questions which are in the least in dispute. Your Honors will bear in mind that nobody attempted to tell Petitioner how to rule on any of the matters pending before him. All of them united with one complaint, "We are not trying to tell you what to do—just do something. Rule!" Under the judicial hierarchy of the State of Texas, the District Court serves a dual function in regard to the Probate Court. First, the District Court has general control over probate matters. Secondly, all appeals from the Probate Court are to the District Court and are by trials de novo. However, under the Probate Code of the State of Texas, an appeal may be had only from an order or "act" of the Probate Court. Judge Crouch's failure or refusal to make an order or to act thwarts the appellate jurisdiction of the District Court. In this instance, therefore, the mandamus route is available to the aggrieved party as a matter of internal control of the District Court over the Probate Court. It is not far removed from a kind of administrative proceeding or, putting it another way, it is a part of the procedure for the administration of the court system itself, *Article V, Section 16, Texas Constitution.*

Patently, Judge Crouch has made these long, involved, and expensive proceedings not because of any matters judicially to be determined in the guardian-

ship, which he refuses to do, but for the purpose of saying to the world, "I am not subject to the control or jurisdiction of the District Court in the county where my Probate Court sits." This is manifestly wrong and glaringly not a concern of the Federal courts.

CONCLUSION

THE RESPONDENT RESPECTFULLY PRAYS to the Court that the Petition for Writ of Certiorari to the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas at Dallas be refused.

Respectfully submitted,
LATTIMORE & LATTIMORE
by H. M. Lattimore
512 Continental Life Building
Fort Worth, Texas 76102

For Respondent, William E. Shields, Jr., Guardian.

Joseph P. Burt, Of Counsel

CERTIFICATE OF SERVICE

This is to certify that on the 17th day of ~~August~~ Sept., 1965, a true and correct copy of the foregoing Response to Petition for Writ of Certiorari to the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas was served upon the Hon. A. L. Crouch, counsel for petitioner, by depositing copies thereof in the United States mail addressed to him at the Tarrant County Court House, Fort Worth, Texas.

Joseph P. Burt